

Panaji, 14th November, 2002 (Kartika 23, 1924)

SERIES II No. 33

# OFFICIAL GAZETTE



## GOVERNMENT OF GOA

### SUPPLEMENT

#### GOVERNMENT OF GOA

Department of Labour

#### Order

No. CL/Pub-Awards/98/3664

The following Award dated 20-7-1999 in Reference No. IT/6/86 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio  
Joint Secretary.

Panaji, 30th July, 1999.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. IT/6/86

Workmen

Rep. by Goa Trade & Commercial Workers Union  
Velho Building,  
Panaji Goa.

... Workmen/Party I

V/s

M/s M. S. B. Caculo Pvt. Ltd.,  
Shanta Building,  
Ground Floor,  
St. Inez, Panaji Goa.

... Employer/Party II

Workmen-Party I represented by Shri Subhash Naik.

Employer-Party II represented by Adv. P. J. Kamat.

Dated: 20th July, 1999.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Lieutenant Governor of Goa, Daman and Diu by order dated 16-1-1986 bearing No. 28/48/85-ILD referred the following dispute for adjudication to this Tribunal.

"Whether the action of the management of M/s M.S.B. Caculo Private Limited, St. Inez, Panaji Goa, in refusing to concede the following demands as listed in the Schedule annexed hereto, of the workmen represented through Goa Trade & Commercial Workers' Union are legal and justified.

#### SCHEDULE OF THE DEMANDS

DEMAND No. I: *Grades & Pay scales:* It is demanded that the following grades & pay scales be made applicable to the workmen.

Grade	Designation	Pay scales
I	Peon, Helpers, Sweepers, Watchmen	300-20-400-25- 525-30- 5 5 5 -675-40-875 5
II	Jr. Clerk, Jr. Operator, Jr. Mechanic	400-25-525-30- 675-35- 5 5 5 -850-45-1075 5
III	Typist, Clerks, A/c Clerk, Salesman, A/c Asst-cum-Sales Admn. Asst., Receptionist-cum-typist, Plumber, Operator, Welder, Welder-cum-Fitter, Asst. Mechanic, Driver.	500-30-650-35- 825-40- 5 5 6 -1025-50-1275 5

IV	Sr. Salesman, Supervisor, Sr. Operator, Refrigeration Mechanic, Tractor Mech., Sr. Mechanic, Mines Mate, Sr. Welder	600-35-775-40-975-45- 5 5 5 -1200-55-1475 5
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VII	Sales Executive, Branch-Sales-Manager, Accountant, Head Mechanic, Sr. Ref. Mach.	700-40-900-50-1150-60- 5 5 5 -1450-70-1800 5
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**Demand No. II:** *Flat Rise* : It is demanded that each work person in the above six concerns should be given a FLAT RISE of Rs. 200/- per month over and above the existing consolidated monthly salary which total should be fitted in the respective pay scales and grades in Demand No. I.

**Demand No. III:** *Flatent*: After adding the flat rise of Rs. 200/- to the consolidated salary as existing on 1st June, 1985, the total of flat rise and the existing consolidated salary should be fitted in the pay scales and grades as above. Those below the pay scales shall be fitted in the minimum first stage in the scale-pay and those in between the stages in the pay scale, shall be fitted at the next higher stage in the scale-pay. And thereafter.

**Demand No. IV:** *Seniority Increments*: It is deemed that after Fitment, each workman shall be eligible to seniority increments on the following basis depending on the number of years of service.

Those who have completed one year of service ..... one increment

Those who have completed four years of service ..... two increments

Those who have completed eight years of service ..... three increments

Those with 12 years of service ..... 4 increments

Those with 16 years of service ..... 5 increments

Those with 20 years of service ..... 6 ..... increments.

**Demand No. V:** *Fixed Dearness Allowance*: It is demanded that each of the workperson in M/s M.S.B. Associates Panaji, shall be paid a F.D.A. @ 20% on the total basic salary w.e.f. 1st July, 1985.

**Demand No. VI:** *Variable Dearness Allowance*: It is demanded that each work-person in M/s M.S.B. Associates, Panaji shall be

paid VDA on the All India Consumer Price Index 500 (1960-10) points 500 at the rate of 2/- (Rupees two only) shall be paid to each work-person per month beginning from July, 1985.

**Demand No. VII:** *House Rent Allowance*: It is demanded that each workperson in M/s M.S.B. Associates, Panaji shall be paid H.R. A. at the rate of 10% on the basic monthly salary w.e.f. 1-7-1985.

**Demand No. VIII:** *Travelling Allowance*: It is demanded that each workperson in M/s M.S.B. Associates, Panaji shall be paid Travelling Allowance at the rate of Rs. 02/- per month, w.e.f. 1-7-1985.

**Demand No. IX:** *Washing Allowance*: It is demanded that each workperson in M/s M. S. B. Associates, Panaji shall be paid a washing allowance at the rate of Rs. 25/- per month w.e.f. 1-7-1985.

**Demand No. X:** *Leave Travel Allowance*: It is demanded that each workperson in M/s M.S.B. Associates, Panaji shall be paid LTA at the rate of Rs. 300/- per year.

**Demand No. XI:** *Bhatta*: It is demanded that those workpersons who are required to go out on work such as drivers and other mobile staff shall be paid Bhatta on the following rates:

a) Inside Goa ..... Rs. 10/- per day

b) Outside Goa ..... Rs. 30/- per day with the benefit of double OT for work rendered beyond normal 8 hours and loading expenditure if sent outside Goa or in some special circumstances or cases.

**Demand No. XII:** *Night Shift Allowance*: It is demanded that those workpersons who are required to work shifts shall be paid shift allowances for the following basis:

IInd Shift .... Rs. 3/-

IIIrd Shift .... Rs. 5/- plus milk or coffee

**Demand No. XIII:** *Festival Advance*: It is demanded that each workperson shall be paid salary as festival advance to be deducted in 10 equal monthly instalment.

**Demand No. XIV:** *Loan Facility*: It is demanded that each workperson shall be eligible during the subsistence of this settlement, for a one time loan of Rs. 4,000/- without being charged any interest, and to be deducted in 40 easy instalments.

Demand No. XVI: *Change of Timing:* It is demanded that the workers in M/s M.S.B. Associates, Panaji excepting those with shift working, should be enjoined upon to work under the following timings; 09.00 hrs. to 17.00 hrs. with one hour lunch break; and introduce a five day week with effect from 1-8-1985.

Demand No. XVIII: *Leave Facilities:* It is demanded that each workperson in the management of M/s M.S.B. Associates, Panaji shall be eligible to the following leave facilities:

Privilege leave ..... 30 days per annum with the benefit to accumulate upto 90 days

Causal leave ..... 7 days with no accumulation

Holidays ..... 14 days per annum which should be paid for

Demand No. XIX: *Uniforms, Safety Shoes, Raincoats, Rainshoes:* It is demanded that each workperson should be provided with three pairs of Uniforms (once a year) Raincoats, Rainshoes (once in two years) and one pair safety shoes once a year w.e.f. 1-8-85.

Demand No. XXII: *Allotment of work as per designation:* It is demanded that work should be allotted to the workpersons as per their designations & grade and harassment that is presently being meted out to the workpersons should end.

Demand No. XXIII: *Discount & credit on goods brought from the Caculos:* It is demanded that the existing practice of giving discount & credit on goods bought by the workmen from the House of Caculos should continue.

Demand No. XXIV: *Rest Rooms & Lockers:* It is demanded that each workperson should be allotted a locker to store away safely his/her personal belongings & there should be properly maintained rest rooms and lunch rooms in all the establishments.

If not, to what relief the workmen are entitled to?"

2. On receipt of the reference, a case was registered under No. IT/6/86 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workmen/Party I (for short "Union") filed its statement of claim at Exb. 2. The facts of the case in brief as pleaded by the union are that the employer/Party II (for short "Employer") when started its

business at Panaji in the year 1970 was a sole trading concern dealing initially in the purchase and sale of imported trucks, tractors, and care of reputed brands namely Ford, Zodiac, Zaphier, Anglia, Taunus and Thames/Trader besides motorcycles, cycles, stone crushers, concrete mixer etc. That thereafter, the employer expanded its business and traded in purchase and sale of products like castor oil, motor spares, refrigerators, steel furnitures, TVS, pressure cookers, batteries, lamps/tube lights, radios, tyres, tubes and other electrical appliance of reputed brands, besides undertaking Civil Construction works. That some where in the year 1965, the employer further expanded its business by opening 5 sister concerns namely, M/s M.S.B. Caculo & Associates, Panaji, M/s Metal Suppliers and Grills Stores, Panaji, M/s M.S.B. Caculo Pvt. Ltd. (Escorts Division); M/s M.S.B. Caculo Nets Pvt. Ltd., and M/s Manoj Electronics. That on 2-6-85, a General Body Meeting of the workers of all the six concerns was held at Panaji and it was unanimously decided by the workers unionise themselves in order to safeguard their legal rights, seek wage revision etc. and they decided to become the members of the present union, namely the Goa Trade and Commercial Workers Union, and this fact was informed to Mr. Sridora S. B. Caculo, the Chairman of M/s Caculo Group of Companies and to Shri Mohan S. B. Caculo and Shri Pandurang S.B. Caculo, the Managing Partners. That they were also informed that a Committee was elected among the workers and they were also furnished the names of the office bearers of the company. That thereafter, the President of the Union by letter dated 30-6-85 served a charters of demands on behalf of the workmen on the employer. That on receipt of the letter from the President of the Union, the employer started harassing and victimising the workmen and also started pressurising them to resign from union and further the employer did not even reply to the said letter of the union. That since the demands of the union stood unresolved, the workers decided to go on strike and accordingly, the strike notice was served on the employer intimating that the workmen would strike work on 8-7-83. That the Asst. Labour Commissioner vide letter dated 16-7-85 called the union as well as the employer for discussion on 19-7-85 but the employer refused to sit for discussion, and the meeting was adjourned to 12-8-95 which was attended by the employer. That thereafter, the Asst. Labour Commissioner, Panaji, again invited the union as well as the employer to attend the discussions on 5-9-85 on the issue of charter of demands and accordingly, the union attended the discussion fixed on 5-9-85 but none attended on behalf of the employer. The Asst. Labour Commissioner produced a letter received from the employer wherein it was stated that the question of discussing over the charter of demands did not arise and according to the employer, the wage scales were fair, proper and reasonable. That during the conciliation proceedings held on 12-8-85, the employer had expressed its willingness to offer a reasonable amount towards interim relief pending final settlement on the said charter of demands, but vide letter dated 5-9-85, the employer informed that the wages paid to the workmen were fair and proper and therefore, the

question of discussing over the charter of demands did not arise and as such, the employer denied to pay interim relief. The union contended that due to the adamant attitude of the employer, the conciliation ended in failure. That as a matter of harassment and victimisation the employer denied Annual Increments to the workmen for the year 1985, and hence the workers were left with no alternative but to go on the strike w.e.f. 2-7-86. The union contended that the employer is financially very sound and has the capacity to pay higher salaries to the workmen and grant the demands made by the workmen. The union contended that the employer has neither revised the salaries of the workmen nor has paid the variable dearness allowance inspite of the fact that the prices have been rising and the cost of living in Goa is very high. The union therefore, claimed that the demands raised by them are fair, just and reasonable.

3. The employer filed written Statement at Exb. 3. The employer stated that it is an independent Pvt. Ltd. company and it has no connection with the other companies referred to by the union in the statement of claim. The employer stated that the products sold by them are purchased by mine owners and because of the recession in the mining industry, there is no scope for the new purchases by the mine owners. The employer stated that new motor cycles like Kinetic Honda, Hero-Honda, etc. manufactured by various companies have entered the market which have better potential compared to the products sold by the employer. The employer that it makes huge profits or has huge properties as alleged by the union. The employer admitted that a letter dated 7-7-85 was received from the union stating that the workmen would go on strike from 8-7-85. The employer also admitted that a letter dated 16-7-85 was received from the Asst. Labour Commissioner asking the parties to attend the discussions. The employer stated that since the workmen were not represented by the union namely Goa Trade & Commercial Workers Union and also since the wage scales were fair, proper and reasonable, the discussion on charter of demands were not called for. The employer denied that they had at any time agreed to grant interim relief to the workmen or that settlement on the demands raised by the union would be arrived at. The employer stated that they were revised the wages of the workmen periodically and all the facts including the necessity to travel was considered by them. The employer stated that whenever the wages were increased, the comparable wage structure in Goa was considered. The employer denied that they have the capacity to pay higher salaries to the workmen and grant the demands raised by the union. The employer stated that the workmen are not entitled to any relief as claimed by them and the demands raised by the Union on behalf of the workmen are not just and legal. The union thereafter filed rejoinder at Exb. 4.

4. On the pleadings of the parties, following issues were framed at Exb. 5.

1. Do the workmen Party No. I prove that their wages have been almost stagnant during their service time?

2. Do they further prove that their demands are reasonable and fair compared to what similar establishment pay to their workers in this Territory and elsewhere?
3. Do the Workmen/Party I prove that the financial position of the Party No. II is sound and that they have been making huge profits, but have not kept proper accounts deliberately to show lesser profits as alleged?
4. If so, whether the following demands as listed in the schedule are just and legal taking into consideration overall activities of financial position and assets of Party II as claimed by the Union?
5. Whether the Employer/Party II proves that they do not have the capacity to pay for the increased demands and that their wage structure is higher and on a better level, compared to the wage structure of similar concerns?
6. If so, whether the action of the management in refusing to concede the demands as listed in the schedule is just and legal?
7. If the answer on the above issues is in the negative, to what relief by way of revision of pay scales and grant of other demands are the workmen entitled to?

5. My findings on the issues are as follows:—

- |               |  |
|---------------|--|
| Issue No. 1 : | In the negative  |
| Issue No. 2 : | In the negative  |
| Issue No. 3 : | In the negative  |
| Issue No. 4 : | In the negative  |
| Issue No. 5 : | In the affirmative as far as financial capacity is concerned. In the negative as far as wage structure is concerned. |
| Issue No. 6 : | In the affirmative   |
| Issue No. 7 : | Workmen are not entitled to any relief.  |

#### REASONS

6. Issue Nos. 1 to 4: All those issues are taken up together as they interrelated and the burden was on the union to prove the said issues. The records show that the Union was given several opportunities to lead evidence in the matter. However, inspite of the opportunities given, no evidence was led by the union. On 31-10-96, Shri Subhash Naik representing the union stated that he was closing the evidence of the union and consequently the union's evidence was closed on that day. Therefore, there is no evidence from the Union in support of the demands raised against the employer. The burden was on the union to prove the issue Nos. 1 to 4.

However, the union has failed to discharge this burden. In the present case, the dispute as regards the demands was raised by the union on behalf of the workmen and the reference was made by the Government at the instance of the union. The contention of the union is that the demands are legal and justified. The Bombay High Court, Panaji, in the case of V.N.S. Engineering Services V/s Industrial Tribunal, Goa, Daman and Diu and another reported in F.J.R. Vol. 71 at page 393 has held that he who approaches a Court for a relief should prove his case and if he does not lead evidence must fail. The High Court has further held that the party who raises the industrial dispute is bound to prove the contention raised by him. I have already stated that in the present case, the union has not led any evidence at all in support of the demands and the contention raised by it. Therefore, applying the law laid down by the Bombay High Court in the case of V.N.S. Engineering Services (Supra), and in the absence of any evidence from the union, the issue Nos. 1 to 4 cannot be answered in favour of the union. I therefore, hold that the union has failed to prove the issue Nos. 1 to 4 and hence I answer the said issues in the negative.

7. Issue Nos. 5 and 6: It is settled law that financial position of the employer is one of the main factors which is to be considered for granting the demands of the workmen. In the present case, the employer has taken the defence that its financial position is not sound so as to take the additional burden. The employer has examined one witness namely its Chief Accountant Mr. Shripad Devari. He has stated that the employer is a Private Limited Company registered with the Registrar of Companies under No. 506/G of 1982. He has produced a certificate issued by the Registrar of Companies at Exb. E-1. He has further stated that the employer is registered under the Shops and Establishments Act, ESI Act, Provident Fund Act, Sales Tax Act and has the permanent account number under the Income Tax Act. He has also stated that the Employer/Company has no connection whatsoever, with the other companies namely M/s M.S.B. Caculo, M/s M.S.B. Caculo & Associates, M/s Metal Supply and Grills Stores, M/s Manoj Electronics and M/s Caculo Nets Pvt. Ltd. The above statements of the witness have not been challenged or disputed in his cross examination. The witness Shri Devari has produced the final accounts of the employer/company for the years ending 30-9-83, 30-9-84, 30-9-86 and 30-9-87 at Exb. E-2, E-3, E-4 and E-5 respectively. He has stated that he is unable to produce the final accounts for the year ending 30-9-85 as it is not available. But, he has stated the final account for the year ending 30-9-86 Exb. 4 shows the profit and loss figures for the year ending September 1985 as well as September 1986. He has stated that the profit for the year ending 1985 is Rs. 39,949.66 and for the year ending September 1986, the profit is Rs. 29,492.37 paise and that after adjusting the losses in the previous years, the total profit lying with the employer/company as on 30-9-86 is Rs. 51,006.30 paise and further, that for the year ending 30-9-87 the employer earned profit of Rs. 75,530.96. The above statements of the witness Shri Devari are supported by the final accounts produced at Exb. E-2 to E-5. The union has neither disputed the above statements of the

said witness in his cross examination nor has challenged or disputed the said final accounts produced by him. Infact, the witness Shri Devari has not been cross examined at all on the financial position of the employer/company. From the above evidence of the employer and mainly the final accounts, it is evident that the financial position of the employer for the period 1984 to 1987 was not good and the profit which has been made by the employer per year was very less. The witness Shri Devari has stated in his deposition that after demands were raised by the union, the same were worked out by the employer and as per said demands, the employer had to pay to each worker Rs. 700/- more p.m. in addition to the other benefits such as Bhatta, uniform, concessions in purchases, interest free loans etc. and if those demands were met, employer would have suffered loss. He has further stated that if the employer had conceded the demands even to the extent of 20%, the employer would have suffered in their profit by an amount of approximately Rs. 40,000/- per year. He has further stated that the employer has not even declared dividend to the share holders till this date. All the above statements of the witness have gone unchallenged in his cross examination. The evidence on record produced by the employer on its financial position shows that its financial position was not good during the period 1984-87. I am therefore, of the view that the employer has succeeded in proving that it did not have the financial capacity to meet the demands of the union and hence the employer was justified in refusing to concede the demands of the union. The employer had contended that the wages paid to the workers are higher and on a better level than those paid by similar concerns. However, no evidence whatsoever has led by the employer on this aspect. Infact, the witness Shri Devari has stated in his cross examination that the employer company is covered under the provisions of Minimum Wages Act and the wages of the workers are fixed as per the provisions of the said Act. This being the case, I hold that the employer has failed to prove that its wage structure is higher and on a better level compared to the wage structure of similar concerns. In the circumstances, I answer the issue Nos. 5 and 6 accordingly.

8. Issue No. 7: While deciding the issue Nos. 1 to 4, I have held that the union has failed to prove that the demands raised against the employer are reasonable or that they are legal and justified. In view of the absence of any evidence from the union, I have decided the issue Nos. 1 to 4 against the union. I have also held that the employer was justified in refusing to concede to the demands of the union. In the course of arguments, Shri Subhash Naik, representing the union submitted that the workers should be paid atleast minimum wages. In my view, the union is not entitled to make this submission. Firstly, because, there is no pleading in the statement of claim filed by the union as regards payment of minimum wages to the workmen and secondly because no issue has been framed in this respect. In any event, Shri Devari, the employer's witness has stated in his cross examination that the employer/company is covered under the provisions of Minimum Wages Act and that the workers are paid wages as per the provisions of the said Act. This

being the case, the submission of Shri Naik that the workers should be paid Minimum Wages does not survive. In the circumstances, I hold that the workers are not entitled to any relief and hence I answer the issue accordingly.

I therefore, pass the following order:—

#### ORDER

It is hereby held that the action of the management of M/s M.S.B. Caculo Pvt. Ltd., St. Inez, Panaji Goa, in refusing to concede the demands listed in the schedule of the workmen represented through Goa Trade and Commercial Workers Union is legal and justified. It is hereby further held that the workmen are not entitled to any reliefs.

No order as to costs.

Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

#### Order

No. CL/Pub-Awards/98/3665

The following Award dated 6-7-1999 in Reference No. IT/20/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio  
Joint Secretary.

Panaji, 30th July, 1999.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. IT/20/96

Shri John Fernandes,  
House No. 71, Valkini Colony No. II,  
Sanguem - Goa.

... Workman/Party I

V/s

M/s Kadamba Transport Corporation Ltd.,  
Panaji - Goa,

... Employer/Party II

Workman-Party I represented by Shri K. V. Nadkarni.

Employer-Party II represented by Shri A. S. Shirvoikar.

Dated:— 6th July, 1999.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Governor of Goa by order dated 19-4-1996 bearing No. 28/13/96-LAB referred the following dispute for adjudication to this Tribunal.

"Whether the action of M/s Kadamba Transport Corporation Ltd., in the terminating the services of the Shri John V. Fernandes, Driver, with effect from 22-3-95 is legal and justified.

If not, to what relief the workman is entitled?"

2. On receipt of the reference, a case was registered under No. IT/20/96 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workmen/Party I (for short, "Workman") filed its statement of claim at Exb. 5. The facts of the case in brief as pleaded by the workman are that he was initially appointed as a daily wage driver w.e.f. 29-4-92 and after giving a break for about 20 days w.e.f. 26-7-92 to 14-8-92 he was taken back in employment w.e.f. 15-8-92. That he was sick from 18-1-95 and as per procedure he sent a notice about his sickness intimating his sickness to the Depot Manager. That on 19-4-95 when he declared fit to resume his duties, he approached the Depot Manager at Margao and represented himself before him for joining his duties and presented his joining report along with a medical certificate. That the Depot Manager refused to allow him to report for duties and also did not accept the joining report presented by him and he was directed to report to the Asst. Personnel Officer at the Head Office at Panaji, to seek necessary instructions in the matter. That accordingly he contacted the Asst. Personnel Officer and presented a separate joining report on the same day and offered himself for employment. But the Asst. Personnel Officer expressed his inability to allow him to report for the work and informed him that a termination order had been passed against him and that the same will be posted to him soon. That the Asst. Personnel Officer also advised him to prefer an appeal against the termination order on receipt of the same by him from post. That on receipt of termination letter dated 22-3-95 he filed as appeal before the Managing Director of the Corporation as advised by the Asst. Personnel Officer but by management failed to take him back in service. That as per the order of termination issued to him by the General Manager, his services were terminated as per the Certified Standing Orders of the Corporation. The workman contended that the employer did not comply with Sec. F of the Industrial Disputes Act, 1947 even though at the time of termination of service he had completed a continuous service of more than 3 years. The workman contended that termination of his service is illegal and unjustified. The workman contended that his

absence from duty was solely due to his sickness and at the time of reporting back for duties he had produced necessary medical certificate. The workman therefore claim that he is entitled to reinstatement in service with back wages and other benefits.

3. The employer filed written statement at Exb. 6. The employer stated that the workman was appointed on daily wages w.e.f. 29-4-92 and as his services were found unsatisfactory his services were terminated w.e.f. 26-7-92 vide order dated 22-7-92. The employer stated that the workman was again appointed on daily wages vide order 14-8-92 and thereafter vide order dated 1-3-93 he was appointed on probation in the pay scale of Rs. 950-1600 and the service conditions were governed by the Certified Standing Orders of the employer. The employer stated that after the workman was appointed on probation he is to remain absent without authorisation thereby disrupting the services of the employer and resulting into inconvenience to the public. The employer stated that vide notice dated 20-2-95 the workman was directed to report for duty immediately failing which he was warned that action will be taken against him. The employer stated that the said notice was received by the workman on 22-2-95 and inspite of the receipt of the said notice the workman did not join his duties and also failed to send any communication to the employer regarding his absence. The employer stated that another notice dated 4-3-95 was sent to the workman asking him to report for duties immediately on receipt of the said notice and he was told that if he failed to do so, it will be presumed that he is no longer interested in the services of the employer and his name will be deleted from the muster roll. The employer stated that the said notice was received by the workman on 14-3-95. Since inspite of the receipt of the said notice the workman did not report for duties nor intimated reasons for his absence, the employer vide order dated 22-3-95 deleted the name of the workman from the muster roll and he was directed to collect all his dues from the Accounts Department of the employer. The employer stated that the said notice was received by the workman on 30-3-95. The employer stated that the workman was given ample opportunity to justify his absence from 18-1-95 by giving him notice dated 20-2-95 and 4-3-95. The employer submitted that an appeal against the termination order was filed by the workman. The employer stated that before the decision was taken on the said appeal the workman moved the Dy. Labour Commissioner and Conciliation at Margao and since the conciliation proceedings ended in a failure, the failure report was submitted by the Conciliation Officer. The employer stated that the name of the workman was deleted from the muster roll as per the provisions in the Certified Standing Orders of the employer and hence the action taken by the employer is legal and justified. The employer denied that the workman is entitled to reinstatement in service or for any other relief as claimed by him. The workman thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties, issues were framed at Exb. 8 and the evidence of the workman and the employer was record. After the evidence of the parties

was recorded the case was fixed for final arguments. However, on 11-5-99 the parties appeared along with their respective representative and submitted that the dispute between the parties was amicably settled. The parties filed terms of settlement dated 11-5-99 at Exb. 14 and proved that consent award be passed in terms of the said settlement. I have gone through the said terms of settlement and I am satisfied that the settlement is certainly in the interest of the workman. I therefore, accept the submission made by the parties and pass the consent award in terms of the settlement dated 11-5-99 at Exb. 14.

#### ORDER

1. It is agreed between the parties that the workman concerned in the refiner shall be appointed as Heavy Vehicle Driver in initial pay of Rs. 3050 /- in the pay scale of Rs. 3050-75 3950-80-4590/- on regular basis.
2. It is agreed between the parties that the workman concerned shall be appointed as a fresh driver.
3. The workman concerned agreed to forgo all the benefits and continuity in service. Workman concerned shall be treated as appointed as fresh Heavy Vehicle Driver.
4. It is agreed by the workman that, the claim raised in above reference stand conclusively settled and have no any claim of any monitory benefits which can be computed in terms of money or continuity in service.
5. It is agreed by the Employer that the workman will be appointed as Heavy Vehicle Driver immediately from the date of filing of these consent terms.
6. It is agreed between the parties that the claim raised by the workman in the reference stand conclusively settled.

No order as to costs. Pronounced in the Open Court.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

#### Order

No. CL/Pub-Awards/98/3667

The following Award dated 8-7-1999 in Reference No. IT/71/92 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio  
Joint Secretary.

Panaji, 30th July, 1999.



IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. IT/71/92

Shri Narayan Sawant,  
Anjuna, Bardez-Goa.

... Workman/Party I

V/s

M/s Photophone Industrial India Ltd.,  
Karaswada, Mapusa - Goa.

... Employer/Party II

Workman/Party I - represented by Shri V. Sawant.

Employer/Party II - represented by Adv. P. J. Kamat.

Dated:- 8th July, 1999.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 29-10-1992 bearing No. 28/46/92-LAB referred the following dispute for adjudication by this Tribunal.

"Whether the action of the management of M/s Photophone Industries India Ltd., Karaswada, Mapusa-Goa, in terminating the services of Shri Narayan Sawant, Peon, with effect from 5-10-91 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under no. IT/71/92 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short, "Workman") filed its statement of claim at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer/Party II (for short, "employer") in the Personnel Department as a peon on monthly salary Rs. 300/- from the 14th August 1990. That he worked with the employer for a continuous period of 325 days without any break till the date of termination of his service. That the employer terminated his services vide letter dated 5th October 1991 without complying with the provisions of Sec. 25 F, 25 N and 25B of the Industrial Disputes Act 1947. That the employer terminated his services because he refused to resign from service as demanded by the employer and this fact was brought to the notice of the Asst. Labour Commissioner, Mapusa by him vide his letter dated 8th October 1990. That by letter dated 9th October 1991 he complained to the employer that its personnel clerk Shri Sunil Amonkar persistently told the workman on 6th October, 1991 that he should resign from service. That thereafter the workman raised an industrial dispute before the Asst. Labour Commissioner, Mapusa, vide

letter dated 11-11-91 as regards termination of his service and since the conciliation proceedings ended in failure, the conciliation Officer submitted his failure report to the Government. The workman contended that termination of his service by the employer is illegal and unjustified and it is in violation of the provisions of Sec. 25 F, 25 N and 25 B of the Industrial Disputes Act, 1947 and hence he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 6. The employer stated that it manufactures photographic cameras, audio visual products, photographic chemicals and photographic colour papers at its factory at Karaswado, Mapusa-Goa, and that the employer also employs temporary workers for stipulated periods depending upon the necessity of work which are of temporary nature and the workman was one of such persons who was appointed as peon from time to time. The employer stated that the workman worked intermittently from time to time from October 1991, and since there was no necessity of the services of the workman after 4-10-91 his services were terminated vide letter dated 5-10-91 and he was offered notice pay and compensation as required under Sec. 25 F, of the Industrial Disputes Act, 1947, and was asked to collect his legal dues from the Accounts Department but the workman refused to accept the said letter and also did not go to the Accounts Department to collect his dues. The employer stated that the employer after waiting for some time sent to the workman his legal dues such as notice pay, retrenchment compensation and earned wages upto 4-10-91 by cheque dated 14-10-91. The employer stated that the provisions of Sec. 25 N and 25 B of the Industrial Disputes Act, 1947 are not applicable to the workman as he was a temporary workman employed for specific periods. The employer denied that the services of the workman were terminated/retrenched because he did not tender his resignation or that the termination is illegal and unjustified. As regards the claim of the workman for gratuity the employer stated that the payment of gratuity is not a condition precedent for retrenchment and that the workman is free to apply for gratuity if he is eligible for the same. As regards the claim for bonus the employer stated that the workman is free to approach the company for his outstanding payment of bonus if the same is payable. The employer denied that it has been expanding its business and has recruited or is recruiting peon, and helpers. The employer denied that the termination/retrenchment of the services of the workman is illegal and unjustified or that the workman is entitled to reinstatement or any other relief as claimed. The workman thereafter filed rejoinder at Exb. 7.

4. On the pleadings of the parties following issues were framed at Exb. 8.

1. Does the Party I/Workman prove that the termination of his service by the management of Party II w.e.f. 5-10-91 is illegal, unjustified and malafide ?



2. Does the Party I/Workman prove that the Party II has failed to comply with the provisions of Sec. 2(o), 25N and 25B of the Industrial Disputes Act, 1947?
  3. Does the Party I/Workman prove that the Party II is liable to pay him 20% Bonus for the accounting year 1990-91, 1991-92 and the gratuity on the date of the retrenchment/termination.
  4. Does the Party II prove that it has fully complied with the provisions of Sec. 25 F of the Industrial Disputes Act, 1947 and as such demand of the Party I/Workman does not survive?
  5. Whether the Party I is entitled to any relief?
  6. What Award or Order?
5. My findings on the issues are as follows:

- Issue No. 1: In the affirmative.
- Issue No. 2: Does not arise with reference to provisions of Sec. 2(o) & 25 B.  
In the affirmative with reference to provisions of Sec. 25 N.
- Issue No. 3: Does not arise.
- Issue No. 4: Does not arise
- Issue No. 5: As per para. 14 below.
- Issue No. 6: As per order below.

#### REASONS

6. Issue Nos. 1 and 2: Both these issues are taken up together as they are inter-related. The workman filed his written arguments which are on record. I have considered the said arguments. It is the contention of the workman that he was appointed on permanent basis as the employer has failed to prove that he was appointed on temporary basis for specific periods. His contention is that the employer did not give any reasons for terminating his services nor complied with the provisions of Sec. 25F and 25 N of the Industrial Disputes Act 1947 as he was in continuous employment for more than 240 days prior to the date of termination of his service. His contention also is that the employer has violated the provisions of the Goa, Daman and Diu Shops and Establishments Act, 1973 and also that the termination letter issued to him is not signed by the Competent authority. His contention is that his services are terminated because he did not resign from service as per the demand of the employer. The workman has also contended that after termination of his service, the employer has employed some other person as a peon in his place. The workman's contention therefore is that the termination of his service is illegal and unjustified. The contention of the employer on the other hand is that the workman was employed on temporary basis as can be seen from the application of the workman produced at Exb. 1, and the services of the workman were retrenched w.e.f. 5-10-91 as his services were not

required and he was asked to collect all his legal dues from the Accounts Department and that since he refused to accept the termination letter it was sent to him on 15-10-91 by post alongwith the cheques towards the payment of his retrenchment compensation; one month's wages in lieu of notice and towards his legal dues i.e. earned wages upto 4-10-91. Thus according to the employer they complied with the provisions of Sec. 25 F of the Industrial Disputes Act, 1947. The employer's contention is that the provisions of Sec. 25N of the Industrial Disputes Act, 1947 are not applicable because the workman was employed on temporary basis and also the provisions of Goa, Daman and Diu Shops and Establishments Act as their establishment is a factory which is admitted by the workman. The employer's contention is that no evidence has been produced by the workman to prove that some other person has been appointed in his place as a peon after termination of his service.

7. It is the contention of the workman that he was appointed on permanent basis. However, there is no evidence from the workman to support this contention. The employer however has produced the application dated 14-8-90 Exb. E-1 which is signed by the workman. The workman has admitted this application and has also identified his signature and that of the Personnel Manager Mr. Dhurnal on the said application. The workman in his cross examination has stated that he handed over the application to Shri Sunil Amonkar who brought the order of appointment on the said application signed by Personnel Manager Mr. Dhurnal. Above the signature of Mr. Dhurnal there is an endorsement that the workman is taken in Personnel Department w.e.f. 14-8-90 as temporary. The workman has not disputed or challenged this endorsement. Besides, the workman in his cross examination has admitted that when a person is taken in service, he is appointed temporarily and thereafter a letter of probation is issued to him. He has admitted that he was not issued any letter of probation or letter of confirmation. He has further admitted that he was employed on daily wages and he was not paid wages on Sunday and holidays, and that in the wage register he was shown as temporary employee. The employer's contention is that the workman was employed on temporary basis for specific periods. However, there is no evidence from the employer to prove that the workman was employed for specific periods. However, the evidence discussed above establishes the fact that the workman was appointed on temporary basis, and not on permanent basis.

8. The contention of the employer is that the services of the workman were terminated because he was appointed on temporary basis and his services were no more required from 5-10-91. The main contention of the workman is that the employer did not comply with the provisions of Sec. 25F and 25N of the Industrial Disputes Act, 1947 and hence the termination is illegal. It is an admitted fact that the workman was employed as peon. The employer has examined its Jr. Officer (Personnel) Shri Sunil Amonkar in support of its case whereas the

workman has examined himself. It is the case of the employer that the services of the workman were terminated as his services were not required and the provisions of Sec. 25F of the Industrial Disputes Act, 1947 were complied with since the workman has completed more than 240 days of service. Therefore according to the employer the services of the workman were not terminated by way of disciplinary action but his services were retrenched. The workman has sought to contend that no reasons are given for terminating his services. This contention of the workman is incorrect. The services of the workman are terminated by letter dated 5-10-91. The said letter is produced at Exb. W-3 colly. It has been stated in the said letter that the services of the workman are terminated because his services are no more required. Therefore there is no substance in the contention of the workman that reasons for termination are not given. Now it is to be seen whether the retrenchment effected by the employer is legal and proper.

9. The workman's contention is that the employer has failed to comply with the provisions of Sec. 2(oo), 25 F, 25 N and 26 B of the Industrial Disputes Act, 1947. Before dealing with the provisions of Sec. 25 F and 25 N I shall first deal with the provisions of Sec. 25B. The contention of the workman that the employer did not comply with the provisions of Sec. 25 B appears to be fallacious. Sec. 25 B of the Industrial Disputes Act, 1947 only defines what is continuous period of one year or six months. A workman is entitled to the benefits under Sec. 25F or Sec. 25 N of the Act only if he is in continuous service of not less than one year with the employer and Sec. 25 B of the Act comes into play only for the purpose of finding out whether the workman falls within that definition. It states that a workman shall be in continuous service under an employer for a period of one year if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under an employer for not less than 90 days in case of a workman employed below ground in a mine and 240 days in any other case. Therefore since Sec. 25 B is only a defining section, the question of complying with the same does not arise, nor there can be any failure on the part of the employer to comply with the said section. Same is the case in the case of Sec. 2(oo) of the Act. It is only a defining section which defines "Retrenchment". Therefore the question of complying with the same does not arise. Infact it is the case of the employer that they complied with the provisions of sec. 25F of the Industrial Disputes Act, 1947 because the workman had completed one year continuous service, that is, he had completed more than 240 days of service and they wanted to terminate his services by way of retrenchment. In the case of retrenchment compliance of Sec. 25F of Sec. 25N would depend upon whether the employer's establishment falls under chapter V-A or V-B of the Act, Sec. 25N which deals with the procedure for retrenchment, applies to those industrial establishments to whom chapter V-B applies, and Sec. 25 F applies to those establishments

who fall under chapter V-A. Therefore if the employer's establishment falls under chapter V-B, the employer has to comply with Sec. 25 N and not Sec. 25 F. Applicability of the provisions of chapter V-B is provided under Sec. 25K of the Industrial Disputes Act 1947. This section lays down that the provisions of chapter V-B apply to an industrial establishment in which not less than one hundred workman were employed on an average per working day for the preceding 12 months. The workman in para. 1 of his statement of claim stated that the employer employed 400 workers. The employer in para. 3 of their written statement have stated that they are manufacturing photographic cameras, audio visual products, photographic chemicals at their factory at Karaswado, Bardez, Goa, wherein they employ about 250 workmen, which means that the employer employed more than hundred workmen on an average per working day. In view of his clear admission on the part of the employer, chapter VB of the Industrial Disputes Act, 1947 was applicable to the employer's establishment when the services of the workman were terminated on 5-10-91. This being the case the employer had to comply with the provisions of Sec. 25N of the Industrial Disputes Act, 1947 and not the provisions of Sec. 25 F even if contention of the employer is accepted that they have complied with the provisions of Sec. 25 F by paying one month's wages in lieu of notice and the retrenchment compensation, still the termination would not be legal if provisions of Sec. 25 N are not complied with.

10. Sec. 25-N(1) of the Industrial Disputes Act, 1947 reads as follows:

- (1) No workman employed in any Industrial establishment to which this Chapter applies who has been in continuous service for not less than one year under an employer shall be retrenched by the employer unit,—
  - (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereinafter in this section referred to as the specific authority) has been obtained on an application made in this behalf.

Therefore for the applicability of Sec. 25N the workman must have put in continuous service for not less than one year within the meaning of Sec. 25B under the employer. The contention of the employer that Sec. 25 N is not applicable because the workman was employed on temporary basis is not correct. Sec. 25 N is applicable to every workman who was in continuous employment for not less than one year prior to the date of termination of his service whether he was employed on permanent basis or temporary basis. As stated earlier, as per Sec. 25B(2) a workman is deemed to be in

continuous service for a period of one year if the workman during the period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under an employer for not less than 190 days in case of a workman employed below ground in a mine and 240 days in any other case. In the present case admittedly the workman was not employed below ground in a mine. The workman in his cross examination admitted the suggestion of the employer that he worked with the employer for total 325 days. Infact the employer in para.10 of the written statement that the workman worked for more than 240 days within a period of 12 months preceding 5-10-91. In this view of the matter, Sec. 25N applied to the workman and for retrenching the services of the workman the employer had to comply with the two conditions, that is, workman ought to have been given three months' notice in writing indicating the reasons for retrenchment or he was paid wages for three months in lieu of such notice and prior permission for the proposed retrenchment ought to have been obtained of the appropriate Government or of the specified authority. In the present case it is the case of the employer themselves that they complied with Sec. 25 F of the Industrial Disputes Act. Therefore admittedly there is no compliance of the provisions of Sec. 25 N of the Act from the employer. Sec. 25F as well as Sec. 25N prescribe conditions precedent for retrenchment. However, Sec. 25F of the Act applies to Industrial Establishments falling under Chapter V-A whereas Sec. 25N applies to the Industrial Establishments falling under Chapter V-B. Therefore when the provisions of Sec. 25N of the Act applies, the provisions of Sec. 25F do not apply and hence in such a case complying with the provisions of Sec. 25F of the Act will not make retrenchment legal and proper.

11. It is a well settled law that if the conditions prescribed for retrenchment are not complied with, the termination of service does not become valid. The Supreme Court in the case of M/s Avon Services Production Agency Pvt. Ltd., v/s Industrial Tribunal, Haryana, and others reported in AIR 1979 SC 176 has held that giving of notice and payment of compensation is a condition precedent in the case of retrenchment and failure to comply with the prescribing conditions precedent for valid retrenchment in Sec. 25F renders the order of retrenchment invalid and inoperative. The same principal would apply to cases which fall under Sec. 25N. Failure to comply with the conditions precedent for valid retrenchment in Sec. 25N would render there retrenchment invalid and inoperative. The Andhra Pradesh High Court in the case of E.I.D. Parry (India) Limited v/s Labour Court, Guntur and others reported in 1992 Lab. I.C. 278 had held that retrenchment of workmen in violation of the provisions of Sec. 25 N of the Industrial Disputes Act, 1947 is illegal and the workmen are entitled to all the benefits under the law for the time being in force as if no notice of retrenchment is given to them. In the present case there is no evidence from the employer that prior permission from the Government or from the specified authority was obtained for the proposed retrenchment and three month's notice

or wages in lieu of such notice was given to the workman. Infact there is an admission from the employer that they complied with the provisions of Sec. 25F and not 25N. This being the case termination of service of the workman becomes illegal and unjustified. In the circumstances, I hold that the action of the employer in terminating of the services of the workman w.e.f. 5-10-91 is illegal and unjustified I, therefore answer the issue Nos. 1 and 2 accordingly.

12. Issue No. 3: In the statement of claim the workman has raised the contention that he has not been paid 20% bonus for the accounting years 1990-91 and 1991-92 as per the Payment of Bonus Act. The workman also contended in the statement of claim that he has not been paid gratuity on the date of termination of his service i.e. 5-10-91 under the Payment of Gratuity Act. Adv. Shri Kamat, the learned Advocate for the employer has submitted that this Tribunal has no jurisdiction to decide these claims of the workman. His first ground of objection is that the dispute as regards non payment of bonus or gratuity cannot be raised by an individual workman and the second ground is that the issue of non payment of bonus or gratuity is not the term of reference. I agree with the submissions of Adv. Shri Kamat. Under Sec. 2A of the Industrial Disputes Act, 1947 the individual disputes only as regards discharge, dismissal, retrenchment or otherwise termination are treated as industrial disputes and such disputes can be raised by the workman himself. The disputes other than those mentioned above are to be raised by the workman through the union and then only they become industrial dispute. Non-payment of gratuity or bonus are not the dispute which fall under Sec. 2A of the Industrial Disputes Act, 1947 and hence they are to be raised through the Union and they cannot be raised by an individual workman. Besides, the present dispute which has been referred by the Government is only regards the termination of service of the workman. The issue of non-payment of bonus or gratuity is not the part of the terms of reference in the present case. It is a settled law that the Tribunal cannot travel beyond the terms of reference and decide something which is not referred. That would be illegal and without jurisdiction. This being the case the question of deciding the issue whether the workman is entitled to bonus and gratuity as claimed does not arise, and hence I answer this issue accordingly.

13. Issue No. 4: This issue was framed because the employer contended that they have complied with the provisions of Sec. 25 F of the Industrial Disputes Act, 1947 by paying to the workman wages in lieu of one month's notice and the retrenchment compensation as provided under the said section and therefore the demand of the workman that the termination order should be set aside and he should be reinstated in service does not serve. In my view, once it is held that the chapter V-B of the Industrial Disputes Act, 1947 applied to the employer's establishment and for retrenching the services of the workman the employer has to comply with the provisions of Sec. 25N and not

Sec. 25F of the Industrial Disputes Act, 1947 and that the employer did not comply with the provisions of Sec. 25N thereby making retrenchment invalid and inoperative, the question of deciding the issue whether the employer complied with provisions of Sec. 25F and hence the demand of the workman does not survive, does not arise. In the circumstances, I answer the issues accordingly.

14. Issue No. 5: This issue pertains to the relief to be granted to the workman. The ordinary rule is that when the order of termination of service of a workman is held to be illegal and unjustified, he is entitled for reinstatement in service with full back wages unless there are circumstances which do not warrant reinstatement of full back wages. In the present case I do not find any reason to deviate from this rule. The workman in his deposition has stated that he is unemployed. This statement of the workman was not denied in his cross examination. However, the employer in their evidence tried to contend that the workman is employed since the date of termination of his service. Shri Sunil Amonkar, the employer's witness stated in his deposition that since the date of termination of service, the workman is engaged in the business of hiring motorcycle taxi. The workman denied this statement when he was cross examined. No evidence whatsoever has been produced by the employer in support of their contention that the workman is employed or engaged in the business of hiring motorcycle taxi since the date of termination of his service. There is also no evidence on record to show that the past conduct of the workman was not good. The Supreme Court in the case State Bank of India v/s Sundara Money reported in AIR 1976 S.C. 1111, after holding that the termination of the service of the workman was illegal for not complying with the condition precedent for valid retrenchment awarded reinstatement to the workman with full back wages. In para.10 of the judgement, the Supreme Court held as follows:

"What follows? Had the State Bank of India known the law and acted on it, half month's pay would have concluded the story. But that did not happen. And now, some years have passed and the Bank has to pay for no service rendered. Even so, hard cases cannot make bad law. Reinstatement is the necessary relief that follows."

In the present case also the services of the workman were terminated without complying with the provisions of Sec. 25N of the Industrial Disputes Act, 1947 which lays down the preconditions for retrenchment. As mentioned earlier there is no evidence to show that the past conduct of the workman was not good or that the workman is gainfully employed since the date of termination of his service. In my view therefore it is just and proper to award reinstatement to the workman with full back wages. I, therefor, hold that the workman is entitled to reinstatement in service with full back wages and other consequential benefits.

In the circumstance, I pass the following order.

#### ORDER

It is hereby held that the action of the management of the employer M/s Photophone Industries India Ltd., Karaswada, Mapusa-Goa, in terminating the services of the workman Shri Narayan Sawant, Peon, with effect from 5-10-91 is illegal and unjustified. The workman Shri Narayan Sawant is ordered to be reinstated in service with full back wages and other consequential benefits.

No order as to costs. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

#### Order

No. CL/Pub-Awards/98/3668

The following Award dated 1-6-1999 in Reference No. IT/64/94 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 30th July, 1999.

#### IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. IT/64/94

Shri Santosh S. Palyekar,  
Khalapwado, Canca,  
Bardez-Goa.

... Workman/Party I

v/s

M/s Gajanan D. Kalekar,  
Shop No. 41, 42 Municipal Market,  
Mapusa - Goa.

... Employer/Party II

Workman - Represented by Adv. P. J. Kamat.

Employer - Represented by Adv. K. Shetye.

Dated:- 1-6-1999.

# AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 21-12-1993 bearing No. 28/59/93-LAB referred the following dispute for adjudication to this Tribunal.

"Whether the action of the management of M/s Gajanan D. Kalekar, Mapusa, in terminating the services of Shri Santosh S. Palyekar, Counter-Salesman, with effect from 9-11-92 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/64/94 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (For Short, "Workman") filed statement of claim which is at Exb. 4. The facts of the case in brief as pleaded by the workman are that he was employed as a counter-salesman with the Employer/Party II (for short, "Employer") w.e.f. 1-1-81. That he was working as a counter salesman selling the products sold by the employer from the date of his employment till 8-11-1992. That suddenly on 9-11-92 the employer terminated the services of the workman by refusing employment to him without any reason. That by letter dated 8-12-92 the workman raised an industrial disputes before the Asst. Labour Commissioner, Mapusa. That inspite of several meetings held by the Asst. Labour Commissioner, the employer was not ready to attend the said meetings and therefore the dispute could not be settled and as a result the conciliation proceedings ended in a failure. That at the time of termination of service he was not given any notice or one month's wages in lieu of notice nor retrenchment compensation was paid to him as provided under the Industrial Disputes Act. The workman contended that the action of the employer in terminating his services by refusing employment to him is illegal, malafided and unjustified and therefore he is entitled to reinstatement in service with full back wages.

3. The employer filed written statement which is at Exb. 5. The employer admitted that the workman was employed as a counter salesman but denied that his services were terminated. The employer stated that the workman purposely and with willful intentions abandoned the services from October 1992 without any intimation to the employer stated that the matter involved or the issue involved is not at all an industrial dispute. The employer stated that since the workman had abandoned his services without intimating or informing the employer the question of giving any notice or paying any retrenchment compensation did not arise.

The employer stated that the Asst. Labour Commissioner was informed to direct the workman to join the duties. The employer denied that the workman is entitled to any reliefs as claimed by him. The workman thereafter filed rejoinder which is at Exb. 6.

4. On the pleadings of the parties, issues were framed at Exb. 7 and thereafter the evidence of the workman was recorded. When the case was fixed for recording the evidence of the employer the parties submitted that they are trying for amicable settlement of the dispute. When the case was fixed for hearing on 1-4-99 the parties appeared and submitted that the dispute between them was amicably settled and they filed the terms of settlement dated 1-4-99 at Exb. 11. The parties also prayed that a consent award be passed in terms of the said settlement. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of the settlement dated 1-4-99 Exb. 11.

## ORDER

1. It is agreed between the parties that the Employer M/s Gajanan Kalekar shall pay an amount of Rs. 13,500/- (Rupees thirteen thousand five hundred only) to Mr. Santosh Palyekar in full and final settlement of all his dues.
2. It is agreed between the parties that the workman does not press for the relief of reinstatement in service in view of Clause I above.
3. The employer agree to pay the said amount today.

No order as to costs. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

## Order

No. CL/Pub-Awards/98/3669

The following Award dated 16-7-1999 in Reference No. IT/30/99 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 30th July, 1999.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. IT/30/99

Inacio Fernandes,  
H. No. 271, Khirabath,  
Fatorda, Margao-Goa.

v/s

The Managing Director,  
M/s Kadamba Transport Corporation Ltd.,  
Panaji - Goa.

Party I/Workman in person

Party/II Employer represented by Shri A. S. Shirvoikar.

Dated:— 16-7-1999.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of Goa by order dated 12-4-1998 bearing No. IRM/CON/SG/(27)/98/2100 referred the following dispute for adjudication to this Tribunal.

"(1) Whether the action of the Kadamba Transport Corporation Ltd., Panaji-Goa, in dismissing from service Shri Inacio Fernandes, Conductor, with effect from 6-6-1997, is legal and justified ?

(2) if not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/30/99 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The workman appeared in person whereas the employer was represented by Shri A. S. Shirvoikar. The workman filed the application dated 22-6-99 at Exb. 3 stating that the employer have settled the dispute by reinstating him in service and as such he has no dispute against the employer. The workman stated that since the dispute is settled, he does not want to contest the proceedings and prayed that no dispute award be passed. Shri A.S. Shirvoikar representing the employer did not object to the application and agreed to the passing of the no dispute award. Since the workman himself has filed the application stating that he has been reinstated back in service and the dispute has been settled between him and the employer, the dispute does not exist and consequently the reference does not survive.

In the circumstance, I pass the following order.

ORDER

It is hereby held that the reference does not survive since dispute between the parties does not exist in

view of the settlement arrived at between the workman and employer.

No order as to costs. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/3670

The following Award dated 22-7-1999 in Reference No. IT/64/96 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 30th July, 1999.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. IT/64/96

Shri Arjun Goankar,  
Rep. by,  
K.T.C. Drivers & Allied Employees  
Association  
M-25, Housing Board Colony,  
Margao-Goa.

... Workman/Party I

v/s

The Managing Director,  
M/s Kadamba Transport Corporation Ltd.,  
Panaji - Goa.

... Employer/Party II

Workman/Party I - Represented by Shri K. V. Nadkarni.

Employer/Party II - Represented by Shri A.S. Shirvoikar.

Dated:— 22-7-1999.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947) the Government of

Goa by order dated 1-11-96 bearing No. IRM/CON/ / (91)95/11849 referred the following dispute for adjudication to this Tribunal.

"Whether the action of the management of M/s Kadamba Transport Corporation Ltd., Panaji in terminating the services of Shri Arjun Goankar, Driver, with effect from 22-11-94 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference a case was registered under No. IT/64/96 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short, "workman") filed statement of claim which is at Exb. 3. The facts of the case in brief as pleaded by the workman are that he was employed with the Employer/Party II (for short, "employer") as a Driver at Porvorim Depot. That due to urgent work he remained absent from 1-11-94 to 4-11-94 and he reported for work on 6-11-94 and submitted his joining report. That the employer refused to take him on duty and therefore on 7-11-94 he again went to the depot to join the duties and submitted a written note dated 7-11-94 addressed to the depot Manager, Porvorim, requesting him to allow him to join duties. That however he was not allowed to join the duties and was sent away. That therefore on 21-11-94 he received a notice dated 14-11-94 containing wild allegations made against him. That due to shock and humiliation he felt sick on 7th November, 1994 and took the treatment from the ESI doctor from 7-11-94 and sent two medical certificates from ESI dispensary, Corlim to the employer. That on receipt of the notice dated 14-11-94 he went to join the duties 22-11-94 along with the joining report and the copies of the certificates from the ESI doctor. That however, the Depot Manager refused to allow him to report for work. That since he was not allowed to report for duties he made a complaint to the Labour Commissioner, Panaji, vide his letter dated 24-11-84 and the copy of the said complaint was endorsed to the Managing Director of the employer. That thereafter he received a notice dated 9-12-94 directing him to join the duties within 24 hours and on receipt of the said notice he went to the Porvorim Depot along with the joining report and other documents. But the Assistant Traffic Inspector Shri Subhedar took away from him the original joining report dated 21st December, 1994 and all the other documents and drove him out without allowing him to report for duty. That thereafter he wrote a letter dated 24-12-94 to the Managing Director reporting to him all the incidents and requested him to hold an independent enquiry. In the meantime conciliation proceedings were held by the Labour Commissioner on the complaint filed by him and due to the adamant attitude of the employer the conciliation

proceedings ended in failure. The workman contended that the action on the part of the employer in refusing employment to him from 22-11-94 is illegal and unjustified and hence he is entitled to be reinstated in service with full back wages and continuity in service.

3. The employer filed written statement at Exb. 4. The employer stated that the workman remained absent from 1-11-94 without intimation. The employer stated that on 22-11-94 the workman reported to the Depot Manager but did not produce the original certificate and when he was asked to produce the same he told that he would bring the same immediately but did not produce the same nor made any attempts to join duties thereafter. The employer stated that the workman was sent two notices dated 9-12-94 and 21-4-95 asking him to report for duties on receipt of the said notices and in case he failed to join the duties it would be presumed that he was not interested in service and his name would be deleted from the muster roll. The employer stated that inspite of the receipt of the said notice the workman did not report for work. The employer stated that in the course of the conciliation proceedings the workman was asked to join the duties along with the original fitness certificate but the workman did not take the initiative to join duties and this fact reported to the conciliation officer. The employer denied that the workman was refused employment. The employer stated that on the contrary the workman has abandoned the services. The employer denied that the workman is entitled to reinstatement in service with full back wages or for any other relief. The workman thereafter filed rejoinder at Exb. 5.

5. On the pleading of the parties, issues were framed at Exb. 6 and subsequently the evidence of the workman was recorded. After the evidence of the workman was recorded the case was fixed for recording the evidence of the employer. At the stage when the evidence of the employer was partly recorded the parties submitted that they desire to settle the dispute amicably and accordingly sought time which was granted. On 24-6-99 when the case was fixed for hearing the parties appeared and submitted that the dispute between them was amicably settled and they filed the terms of settlement dated 24-6-99 at Exb. 11. The parties prayed that consent award be passed in terms of the settlement. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workman. I, therefore accept the submissions made by the parties and pass the consent award in terms of settlement dated 24-6-99 at Exb. 11.

#### ORDER

1. It is agreed between the parties that the workman concerned in the reference shall be re-instated



in the service of the Corporation as a Heavy Vehicle Driver with effect from the date of his dismissal.

2. It is agreed between the parties that, the seniority of the workman will be maintained.
3. It is agreed between the parties that, the last pay drawn by the workman will be protected i.e. his pay will be Rs. 3200/- in the pay scale of Rs. 3050-75-3950-80-4590/-.
4. It is agreed by the Workman/Party I that he shall forgo all the benefits including salary from the date of his dismissal till date of joining.
5. It is agreed by the Workman/Party I that the claim raised in the above reference stand conclusively settled and have no claim of the monetary benefits which can be computed in terms of money.
6. It is agreed by the Employer/Party II that, the workman will be reinstated immediately as Heavy Vehicle Driver from the date of filing these concerned terms.
7. It is agreed between the parties that the claim raised by the Workman/Party I in the reference stand conclusively settled.

No order as to costs. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

#### Order

No. CL/Pub-Awards/98/3671

The following Award dated 6-7-1999 in Reference No. IT/62/84 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 30th July, 1999.

#### IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. IT/62/84

Shri Narsinha Naik,  
Rep. by the President,  
All Goa Co-operative Workers' Union,  
Kamgar Karyalaya,  
Panaji-Goa.

... Workman/Party I

v/s

M/s Canacona Taluka Farmers Service  
Co-operative Society Limited,  
Canacona - Goa.

... Employer/Party II

Workman/Party I represented by Shri V. Shirodkar.

Employer/Party II - represented by R. Pednekar.

Dated:— 6-7-1999.

#### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (14 of 1947) the Lieutenant Governor of Goa, Daman and Diu referred the following dispute for adjudication by this Tribunal by order dated 6th December, 1984 No. 28/41/84-ILD.

"Whether the action of the employer, M/s Canacona Taluka Farmers Services Co-operative Society Limited, Canacona-Goa, in terminating the services of Shri Narsinha Naik, Clerk, with effect from 1-6-84 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/62/84 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. Workman/Party I (for short, "workman") filed his statement of claim at Exb. 2. The facts of the case as pleaded by the workman are that he was working with the Employer/Party II (for short, "employer") as a clerk from 1-10-76. That on or about 30-8-84 he was served with the chargesheet dated 24-1-84 containing as many as five charges such as misbehaviour, giving false information, issuing false statement regarding payments, misappropriation and insubordination and insulting superiors by sending offending letters. That the workman replied to the said charge sheet by reply dated 4-2-84 denying the charges levelled against him. That in the meantime the workman received the suspension order dated 1-2-84 stating that he is suspended with effect from 1-2-84. However,

4-2-84 the employer issued another letter to the workman informing him that his suspension order was revoked w.e.f. 1-2-84 and he was directed to hand over the charge of Nagersem branch to Shri Narso C. Velip. That thereafter the workman was directed to go on earned leave from 1-3-84 by the employer by letter dated 29-2-84. That on 2-5-84 when the workman went to the office of the employer Shri Sriram Raikar called and informed him that he was appointed as an Inquiry Officer and that has fixed the enquiry on that day i.e. on 2-5-84 for which the workman stated that he was not aware of the said enquiry as he has not received any notice in that respect. The Inquiry Officer gave him a letter dated 2-5-84 informing him that the enquiry would be held on 5-5-84 at 10.00 a.m. That the workman by letter dated 3-5-84 objected to the appointment of Shri Raikar as the Inquiry Officer, he being one of the Directors of the Employer/Society. That Shri Raikar refused to receive the letter and as per his instructions the said letter was handed over to the Chairman of the Employer/Society. That the workman was asked to give his explanation as to why Shri Raikar should not be allowed to conduct the enquiry and the explanation was called on or before 12-5-84. That letter dated 9-5-84 calling information was served on the workman on 11-5-84 and therefore the workman asked for 7 days time to give his explanation. However, the employer gave him time up to 15-5-84 till 1.00 p.m.. The workman informed the Chairman that he was not able to give the explanation on 15-5-84 as directed by him. That however, the workman did not know what happened thereafter. On 13-6-84 when the workman had gone to the office of the employer to collect his salary for the month of May, 1984 he was served with the letter dated 13-6-84 informing him that his services have been terminated. That the workman made a representation dated 22-6-84 to the Chairman stating that he was not given opportunity to lead evidence before the Inquiry Officer and therefore requested to revoke the order of termination. That when the workman had come to the office of the Employer on 25-6-84 informing him that his services had been terminated w.e.f. 1-6-84 by order dated 27-5-84.

3. The employer filed written statement at Exb. 3. The employer stated that as the reply given by the workman to the chargesheet was not found to be satisfactory the Inquiry Officer was appointed to hold the enquiry into the charges levelled against the workman. The employer stated that the enquiry conducted by the enquiry officer was fair, just and impartial. In spite of the opportunity given to the workman the workman declined to participate in the enquiry and did not lead any evidence in support of defence. The employer stated that since the Inquiry Officer submitted his report holding that the charges levelled against the workman were proved, the order of termination of service was issued to the workman. The employer contended that the order of

termination was well justified and proper and stated that no interference in the said order was called for. Thereafter the workman filed rejoinder at Exb. 4.

4. Since the workman had contended that he was not given opportunity to lead evidence before the Inquiry Officer in support of his defence, a preliminary issue was framed as to whether the domestic enquiry held by the employer is fair and proper and with due compliance with the principles of natural justice. After the evidence was lead by both the parties on the preliminary issue this court by order dated 25th August, 1994 set aside the enquiry and directed the parties to lead evidence on the merits of the case. Accordingly, both the parties led evidence on the merits of the case. When the case was fixed for final arguments, both the parties submitted that they were trying to arrive at an amicable settlement. At the request of the parties, the case was fixed on 26-4-99 for filing the terms of the settlement. Accordingly on the said date both the parties appeared and submitted that they had arrived at an amicable settlement and filed the terms of settlement dated 26-4-99 at Exb. 19. Both the parties prayed that consent award be passed in terms of the said settlement dated 26-4-99 at Exb. 19. I am satisfied that the said terms are certainly in the interest of the workman. I therefore, accept the submissions made by the parties and pass the consent award in terms of the said settlement dated 26-4-99 at Exb.19.

#### ORDER

1. It is agreed between the Party I and Party II that the Party II shall pay to the Party I an amount of Rs. 31,401.00 (Rupees thirty one thousand four hundred one only) which is detailed as under:—

Wages from June 1984 to December, 1989	= Rs. 24,216.50
Bonus	= Rs. 1,409.50
Leave encashment	= Rs. 2,310.00
Gratuity	= Rs. <u>3,464.00</u>
Total ... ..	= Rs. <u>31,401.00</u>

2. It is agreed between the party I and Party II that the above consent terms are binding and finally set at rest adjudication of the aforesaid case and further it is agreed by these consent terms that the Party I have met his claims and no claim hereinafter will be agitated or filed before this Hon. Court or any other Court/ Authority in this respect against the Party II.
3. It is further agreed between the parties that the Party II shall pay the said amount of Rs. 31,401.00

(Rupees thirty one thousand four hundred one only) in two equal instalments and the first instalment shall be paid on or before 15th May, 1999 and second instalment shall be paid on or before 16th August, 1999 and the instalment amount on the respective due dates will not carry any interest.

No order as to costs. Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

### Order

No. CL/Pub-Awards/98/99/4092

The following Award dated 13-8-1999 in Reference No. IT/43/97 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 23rd August, 1999.

### IN THE INDUSTRIAL TRIBUNAL GOVERNMENT OF GOA AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. IT/43/97

Shri Vishwas Chodankar,  
Rep. by KTC Drivers & Allied Employees Association,  
Velho Building, 2nd Floor,  
Panaji-Goa. ... Workman/Party I

v/s

M/s Kadamba Suburban Transport  
Corporation Ltd.,  
Panaji - Goa. ... Employer/Party II

Workman/Party I represented by Shri Suhas Naik.

Employer/Party II - represented Shri A. S. Sirvoikar.

Dated:— 13-8-1999.

### AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, the Government of Goa by order No. IRM/CON-MAP/(18)/97/4272 dated 11th August, 1997 referred the following dispute for adjudication to this Tribunal.

"Whether the action of the employer, M/s Kadamba Suburban Transport Corporation Limited, Panaji-Goa, in terminating the services of Shri Vishwas Chodankar, Driver, with effect from 25-5-94 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/43/97 and registered A/D notice was issued to the parties. In pursuance to the said notice the parties put in their appearance. The Workman/Party I (for short, "workman") filed his statement of claim which is at Exb. 4. The facts of the case in brief as pleaded by the Workman/Party I are that, he was initially employed as Driver on temporary basis with effect from 6-3-93 and thereafter, was taken on probation for a period of six months from 1-1-94 on regular pay-scale basis. That thereafter, on 25-5-94, the Personnel Manager of the Employer/Party II (for short "Employer") issued a dismissal order alleging that his performance was unsatisfactory. That however, no specific instances of unsatisfactory performance was spelt out in the dismissal order. That he was not issued any charge-sheet nor any domestic enquiry was held against him. That he had completed 240 days of continuous service, but the employer did not pay any retrenchment compensation to him as required under Section 25-F of the I. D. Act, 1947. The workman contended that the termination of his service is illegal and unjustified and it is by way of victimisation and harassment for his legitimate trade union activities, since the management was bent upon in crushing the union movement which the workmen had started for their just and legal rights. That the workman raised a dispute as regards the termination of his service through the union. The conciliation proceedings held by the Assistant Labour Commissioner, Mapusa ended in a failure and the failure report was submitted to the Government. The workman claimed that he is entitled to reinstatement in service with full back wages and continuity in service.

3. The Employer filed Written Statement which is at Exb. 5. The employer stated that since the workman was employed with the Employer M/s Kadamba Suburban Transport Corporation Ltd., the workman ought to have made a claim against the said Corporation and sought reliefs from the said Corporation. The employer stated that at the time when the services of

the workman were terminated, he was on probation and the termination of his service was in terms of the provisions of the Certified Standing Order of the employer. The employer stated that the services of the workman were terminated because of his unsatisfactory performance. The employer denied that the provisions of Section 25-F of the I. D. Act, 1947 were required to be complied with for terminating the services during the probationary period. The employer denied that the workman is entitled to any reliefs as claimed by him. The workman thereafter, filed rejoinder.

4. On the pleadings of the parties, issues were framed and thereafter, the case was fixed for the evidence of the workman. On 12-8-99, the parties appeared and submitted that the disputes between them was amicably settled and they filed the terms of settlement dated 12-8-99 at Exb. 16. The parties also prayed that an Award be passed in terms of the settlement. I have gone through the terms of the settlement dated 12-8-99 filed by the parties which are duly signed by them and I am satisfied that the said terms are certainly in the interest of the workman. I therefore, accept the submissions made by the parties and pass the Consent Award in terms of the settlement dated 12-8-99 Exb. 16.

ORDER

1. It is agreed between the Parties that the workman concerned in the reference shall be reinstated in the service of the Corporation as a Heavy Vehicle Driver within 15 days from the date of receipt of the Award of Industrial Tribunal from the Government.
2. It is agreed by the Employer/Party II, considering the absorption of employees of Kadamba Suburban Transport Corporation Limited to Kadamba Transport Corporation Limited due to defunct, the workman/Party I will be absorbed in the Kadamba Transport Corporation Limited.
3. It is agreed between the parties that the seniority of the workman will be maintained.
4. It is agreed between the parties that his pay will be fixed Rs. 3050/- in the pay scale of Rs. 3050-75-3950-80-4590/- from the date he joins service as per clause 1.
5. It is agreed by the workman/Party I that he shall forgo all the benefits including salary from the date of his dismissal to till date of joining and he cannot claim any benefits for this period.
6. It is agreed by the workman/Party I that the claim raised in above reference stands conclusively

settled and have no any claim of the monetary benefits which can be computed in terms of money.

7. It is agreed between the parties that the claim raised by the workman in the reference stands conclusively settled.

No order as to costs.

Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/99/4210

The following Award dated 19-8-1999 in Reference No. IT/30/1996 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 1st September, 1999.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. IT/30/96

Shri Jessy Luis and 2 Others,  
157, Chinchal,  
Behind Hotel Annapurna,  
Margao-Goa.

... Workmen/Party I

v/s

M/s Tucaram S. Loliencar,  
Station Road,  
P. O. Box Margao Goa.

... Employer/Party II

Workman/Party I represented by Shri K.V. Nadkarni.

Employer/Party II - represented by Adv. Shri P. J. Kamat.

Dated:— 19-8-1999.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947), the Government of Goa, by order dated 9-5-96 bearing No. 28/17/96-LAB referred the following dispute for adjudication to this Tribunal.

"Whether the action of the management of M/s Tucaram S. Loliencar, Margao, in terminating the services of S/Shri Jessy Luis, Augustino Gomes and Harold Fernandes, Salesmen with effect from 22-10-94 is legal and justified ?

If not, to what relief the workmen are entitled ?"

2. On receipt of the reference, a case was registered under No. IT/30/96 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workmen/Party I (for short, "workmen") filed their statement of claim at Exb. 5. The facts of the case in brief as pleaded by the workmen are that the workmen were employed with the Employer/Party II (for short, "Employer") at the principal place of business at the Station Road, Margao. That the employer is a commercial firm engaged in the sales and distribution of all brand products of I.T.C. Limited, Calcutta. That the workman Shri Jessy Luis was employed w.e.f. 19-10-89 as a Supervisor in the sales section and his last drawn salary was 1500/- p.m. That the workman Shri Harold Fernandes was employed from March/93 as a Supervisor in the sales section and his last drawn salary was Rs. 1200/- p.m. and the workman Shri Augustino Gomes employed from July/93 also as a supervisor in the sales section and his last drawn salary Rs. 1200/- p.m. That the duties performed by the workmen were being co-ordinated and carried out under the supervision of the Manager, the Managing Partner, ITC, Sales representatives and other officials. That the ITC was remitting various amounts to the employer for effecting payments to the sales supervisors and whenever, requests were made by the workmen to the employer to settle the amount received from the ITC, wordy duel used to take place between the workmen and the Managing Partner Mr. Venket Loliencar. That on 22-10-94, the workmen reported for duties and during the course of the day, there were some discussion with the Managing Partner regarding reimbursement of allowances remitted by the ITC and during the said discussions, the Managing Partner lost his temper and asked the workmen to leave the office immediately and said that their services were terminated forthwith. That, no letter of termination was issued in writing though the workmen demanded for the same. That on 23-10-94, the workmen went to the office and offered themselves for employment, but the employer remained adamant and

ordered the workmen to leave the premises. That thereafter, by letter dated 7-11-94, the workmen protested about termination of their services and a copy of the said letter was sent to the Deputy Labour Commissioner, Margao. That the Conciliation proceedings held by the Dy. Labour Commissioner resulted in a failure and hence the Government made the present reference to this tribunal for adjudicating the dispute. The workmen contended that since the termination of their services by the employer is illegal, unjustified and malafide, and therefore, they are entitled to reinstatement in service with full back wages.

3. The employer filed written statement at Exb. 7. The employer stated that it is a partnership firm engaged in the sales and distribution of brand products to ITC Limited, Calcutta i.e. namely, cigarettes and chavi matches. The employer stated that it has an office and a shop at Margao having seven staff members in the office namely, the clerks, steno-cum-clerk, and peon and eight employees in the shop in the category of salesmen, clerks, godown keeper, Shop Assistant and driver. The employer stated that all the administrative and accounts work relating to the sales and distribution of the products is done at the office and the sales and distribution is done from the shop for which purpose there are four salesmen. The employer denied that they had engaged the workmen at any time and therefore, stated that the question of terminating their services orally from 22-10-94 not arise. The employer denied that the workmen were employed by the employer at their principal place of business at Station Road, Margao from the respective dates mentioned by the workmen and that their last drawn wages was of the amount mentioned by them. The employer denied that on 22-10-94, the workmen came to report for duty and that in the course of the day, they had some discussion with the Managing Partner Mr. Venkat Loliencar regarding reimbursement of allowances by the ITC Limited. The employer denied that the Managing Partner told the workmen that their services stood terminated with immediate effect and asked them to leave the premises. The employer stated that since the workmen were not in their employment, the question of they reporting for their duties or that their services being terminated did not arise. The employer stated that the workmen are not entitled to any reliefs as claimed by them. The workmen thereafter filed rejoinder at Exb. 8.

4. On the pleadings of the parties, issues were framed at Exb. 9 and thereafter, the evidence of the workmen was partly recorded. On 22-7-99, when the case was fixed for hearing, the parties appeared alongwith their representatives and submitted that they had settled their dispute amicably and they filed terms of settlement dated 22-7-99 at Exb. 12. The parties prayed that Consent Award be passed in terms of the said settlement. I have

gone through the terms of the said settlement dated 22-7-99 and I am satisfied that the said terms are certainly in the interest of the workmen. I therefore, accept the submissions made by the parties and pass the Consent Award in terms of the said settlement dated 22-7-99 Exb. 12.

ORDER

1. It is agreed between the parties that the Party II M/s Tucaram S. Loliencar shall pay an amount of Rs. 25,000/- (Rupees twenty five thousand only) to Mr. Jessy Luis; Rs. 12,500/- (Rupees twelve thousand five hundred only) to Mr. Harold Fernandes; and Rs. 12,500/- (Rupees twelve thousand five hundred only) to Mr. Augustino Gomes, Party I, in full and final settlement of the dispute.
2. It is agreed between the parties that on payment of the amount agreed in clause (1) above, the Party I/workmen shall have no claim of whatsoever nature against the Party II and the Party I/workmen give up their demand for reinstatement in services with full back wages and other benefits.
3. It is agreed between the parties that the amount payable by the Party II to the Party I/Workmen in the manner hereinabove provided for are in full and final settlement and satisfaction of all claims of the workmen against the company including claims for compensation for loss of office or otherwise howsoever.
4. It is agreed between the parties that the above amount shall be paid to the workmen on or before 22nd July, 1999.

No order as to costs.

Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

Order

No. CL/Pub-Awards/98/1999/4212

The following Award dated 18-8-1999 in Reference No. IT/33/92 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of

Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio Joint Secretary.

Panaji, 1st September, 1999.

IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI

(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)

Ref. No. IT/33/92.

Shri R. V. Karbotkar,  
Rep. by  
Automobile Corporation of Goa Ltd.,  
Workers Union,  
Honda, Satari Goa. ... Workman/Party I

v/s

M/s Automobile Corporation of Goa Limited,  
Honda, Satari Goa.. ... Employer/Party II

Workman/Party I represented by Shri Subhash Naik.

Employer/Party II represented by Adv. M.S. Bandodkar.

Dated:— 18-8-1999.

AWARD

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes Act, 1947, (Central Act 14, of 1947), the Government of Goa, by order No. 28-8-92-LAB dated 13-4-1992 referred the following dispute for adjudication to this Tribunal.

"Whether the action of the management of M/s Automobile Corporation of Goa Ltd., Honda, Satari Goa, in terminating the services of Shri R. V. Karbotkar, Operator, with effect from 7-6-94 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/33/92 and registered A/D notice was issued to the parties. In pursuance to the said notice, the parties put in their appearance. The Workman/Party I (for short, "Workman") filed his statement of claim which is at

Exb. 3. The facts of the case in brief as pleaded by the workman are that he was employed by the Employer Party II (For short, "Employer") as an Operator from 1-12-83. That the employer issued a chargesheet dated 2-4-90 to the workman alleging that he had unauthorisedly remained absent on several occasions. That alongwith the chargesheet, two statements were also enclosed alleged to be showing unauthorised absence and the attendance of the workman. That thereafter, domestic enquiry was held into the said charges and the Enquiry Officer submitted his findings on 20-5-90 holding the workman guilty of the charges levelled against him. That subsequently, the employer issued a show cause notice to the workman dated 28-5-90 as to why his services should not be dispensed with. That though, by letter dated 1-6-90, the workman asked for the copy of the findings of the Enquiry Officer, the copy was given to him only after he had replied to the show cause notice on 4-6-90. That the employer terminated his services w.e.f. 7-9-90 after working hours by letter dated 8-6-90. The workman contended that he could not attend to his duties due to his father's illness and he had informed the employer orally about same from time to time. The workman contended that termination of his services by the employer is illegal and unjustified. The workman also contended that the chargesheet dated 2-4-90 issued to him is vague and since the copy of the findings of the Enquiry Officer was not given to him, on this ground also, the domestic enquiry held against him is liable to be set aside. The workman further contended that the Enquiry Officer violated the principles of natural justice while conducting the enquiry and the finding given by him are perverse.

3. The employer filed written statement at Exb. 4. The employer admitted that the workman was employed as an Operator from 1-12-83. The employer stated that the workman was in the habit of remaining absent unauthorisedly and therefore, a chargesheet was issued to him and an enquiry was held. The employer denied that the chargesheet issued to the workman was vague. The employer stated that the workman participated in the enquiry fully and on receipt of the findings of the Enquiry Officer, the employer accepted the said findings and terminated the services of the workman. The employer denied that the workman had not attended his duties due to his father's illness or that he had orally informed about his father's sickness from time to time to the employer. The employer denied that the Enquiry Officer violated the principles of natural justice in conducting the enquiry or that the copy of the findings of the Enquiry Officer was not given to the workman. The employer stated that the termination of the services of the workman is illegal and unjustified. The workman thereafter, filed rejoinder at Exb. 5.

4. On the pleading of the parties, issues were framed at Exb. 6. The Issue No. 1 which is as regarding the fairness of the enquiry was treated as preliminary issue and the evidence of the parties was recorded on the said issue. By order dated 21-2-95, this Tribunal decided

the issue No. 1 holding that the domestic enquiry held against the workman was fair and impartial. Thereafter, additional issue was framed as Issue No. 1-A to the effect whether the charges of misconduct are proved to the satisfaction of the Tribunal by acceptable evidence and the said issue was also treated as preliminary issue as it was touching the perversity of the findings of the Enquiry Officer. When the case was fixed arguments on issue No. 1-A, on 13-7-99, the parties appeared alongwith their respective representative and submitted that the dispute between the parties is amicably settled and they filed the terms of the settlement dated 13-7-99 at Exb. 18. The parties also prayed that Consent Award be passed in terms of the said settlement. I have gone through the terms of the settlement and I am satisfied that the said terms are certainly in the interest of the workman. The said terms are duly signed by the parties. I therefore, accept the submissions made the parties and pass the Consent award in terms of the settlement dated 13-7-99 Exb. 18.

#### ORDER

1. It is agreed by the Employer/Party II that Rs. 1,35,000/- (Rupees one lakh thirty five thousand only) shall be paid in full and final settlement of all claims arising out of the employment of whatsoever nature including claims arising out of above reference.
2. Mr. Rajendra Karbotkar shall accept the amount mentioned in Clause (1) above in full and final settlement of his claim arising out of his employment and the above reference and further confirms that he shall have no claim of whatsoever nature against the Company, including any claim of reinstatement or re-employment.
3. It is agreed by the workman that the amount mentioned in Clause (1) shall also include Notice Pay, Gratuity, Provident Fund, Bonus, Ex-gratia etc., if any upto date.,

#### (Annexure to Settlement dated 13-7-99)

Reference No. IT/33/92

Name: Rajendra Karbotkar

Ticket No. 2442

1. Compensation (including Notice Pay, Bonus, Ex-gratia etc.)	Rs. 1,15,160
2. Leave encashment	Rs. 338
3. Provident Fund	Rs. 6,405
4. Gratuity	Rs. 13,097
Total:-	Rs. 1,35,000

Income Tax after Section 89(1) relief  
Form No. 10E (Rule 21 AA) furnished  
workman

0

Net Amount:- Rs. 1,35,000

(Rupees One lac thirty five thousand only)



No order as to costs.

Inform the Government accordingly.

Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.

**Order**

No. CL/Pub-Awards/98/4930

The following Award dated 9-9-1999 in Reference No. IT/63/98 given by the Industrial Tribunal, Panaji-Goa, is hereby published as required under the provisions of Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

R. S. Mardolker, Commissioner, Labour & Ex-Officio  
Joint Secretary.

Panaji, 30th September, 1999.

**IN THE INDUSTRIAL TRIBUNAL  
GOVERNMENT OF GOA  
AT PANAJI**

**(Before Shri Ajit J. Agni, Hon'ble Presiding Officer)**

Ref. No. IT/63/98

Kum. Leonor Gurgao,  
Katem, Baina  
Vasco-da-Gama, Goa.

... Workman/Party I

v/s

M/s Pereira Agencies Ltd.,  
Vasco-da-Gama, Goa.

... Employer/Party II

Party I represented by Shri P. Goankar.

Party II represented by Adv. P.J. Kamat.

Dated:— 9-9-1999.

**AWARD**

In exercise of the powers conferred by clause (d) of sub-section (1) of section 10 of the Industrial Disputes

Act, 1947 (Central Act 14 of 1947), the Government of Goa, by order dated 15th July, 1998 bearing No. IRM/CON/VSC/(15)98/9776 referred the following dispute for adjudication to this Tribunal.

"Whether the action of the management of M/s Pereira Agencies Pvt. Ltd., Vasco-da-Gama, Goa, in terminating the services of Kum. Leonor Gurgao, with effect from 18-11-1996 is legal and justified ?

If not, to what relief the workman is entitled ?"

2. On receipt of the reference, a case was registered under No. IT/63/98 and registered A/D notice was issued to the parties. Both the parties were duly served with the said notice. On 3-9-98 Shri Goankar appeared on behalf of the Workman/Party I (for short, "Workman") and filed his statement of claim at Exb. 3. On behalf of the Employer/Party II (for short, "Employer") one Shri Balkrishna appeared and copy of the statement of claim was served on him and the case was adjourned to 21-9-98 for filing of the written statement by the employer. On the said date none appeared on behalf of the employer and therefore the last opportunity was given to the employer to file written statement on 30-10-90. On this date also none appeared on behalf of the employer. The case was proceeded ex-parte against the employer and subsequently after recording the evidence of the workman ex-parte award was passed on 14-1-99 holding the action of the employer in terminating the services of the workman is illegal and unjustified and the workman was ordered to be reinstated in service with full back wages and other consequential benefits.

3. After the ex-parte award was passed the employer filed an application dated 16-4-99 for setting aside the ex-parte award, supported by an affidavit of Mr. Jayant Satyagiri. The copy of the said application was served on the workman who gave no objection for setting aside the ex-parte award and consequently by order dated 30-8-99 the ex-parte award dated 14-1-99 was set aside. After the award was set aside the workman and the employer submitted that the dispute between them was amicably settled and they filed the terms of settlement dated 20th August 1999. Both the parties prayed that consent award be passed in terms of the said settlement. I have gone through the said terms of settlement which are duly signed by parties and I am satisfied that said terms are certainly in the interest of the workman. I, therefore accept the submission made by the parties and the consent award in terms of settlement dated 20th August, at Exb. 6.

**ORDER**

1. It is agreed between the parties that Ms. Leonara Gurjao, Party I shall be paid an

- of amount Rs. 30,000/- (Rupees thirty thousand only) in full and final settlement of all her dues arising out of her termination.
2. It is agreed between the parties that since the Party I has agreed to settle the matter on monetary terms as per clause (1) above, she does not press reinstatement with full back wages and continuity in service.
3. It is agreed between the parties that the amount of Rs. 30,000/- shall be paid to Ms Gurgao in five equal instalment of Rs. 6000/- each payable on 20th of every month.
4. It is agreed and declared by the Party I that the amount payable by the Party II to the workman in the manner hereinabove provided for are in full and final settlement and satisfaction of all claims of the workman against the Party II including the claims of gratuity, compensation for loss of office or otherwise howsoever.
- No order as to costs. Inform the Government accordingly.
- Sd/-  
(Ajit J. Agni),  
Presiding Officer,  
Industrial Tribunal.